

REMARKS

I. STATUS OF THE CLAIMS

Claims 1-24 are pending in the present Application. By the present amendment, Claims 1, 9, and 17 have been amended. No new matter is added.

In the Office Action, claims 9-16 are rejected under 35 U.S.C. § 102(e) (hereinafter, “Section 102(e)”) as being allegedly anticipated by U.S. Pat. No. 6,606,298 to Foltak (hereinafter “Foltak”).

Claims 1-8 and 17-24 are rejected under Section 103(a) as being allegedly unpatentable over Foltak in view of U.S. Pat. No. 6,151,628 to Xu et al. (hereinafter “Xu”).

Applicant respectfully traverses all rejections and requests reconsideration of the subject application as amended herein.

II. REJECTIONS UNDER SECTION 102(e), FOLTAKE

Claims 9-16 are rejected under Section 102(e) as being anticipated by Foltak. Applicant respectfully submits that the amended independent claims 9 and its dependent claims 10-16 are novel as they are not anticipated by Foltak. The cited reference does not teach each and every element of these claims.

A. CLAIM 9

By the present amendment, claim 9 has been amended to more clearly claim the embodiments of the Applicant’s invention. Amended claim 9 now recites in part, “(c) automatically loading the second device management software, immediately following said checking, through said network for replacing said first software such that the device is self-maintaining”.

Support for the amendment can be found in Applicant's specification in paragraph [0031] of the publication describing, "The access point devices are further programmed to periodically do a software check with the server. If the current software version in the device is the same as that stored in the server, no action is taken. If the version in the server is different, then the system automatically loads the current software version into the device" (emphasis added). Paragraph [0071] further describes

"If the version 167 in the server 153 is different from the version 169 in the access point 143 (Block 181), the access point 143 begins a shutdown operation 183. The access point 143 stops making new connections, and waits until all current connections are terminated (Block 183). When all connections are terminated the access point 143 continues..and loads...the new version..." (emphasis added).

This demonstrates the direct loading operation being performed immediately upon determination of the version being different.

### FOLTAK

Foltak is directed to a system using multiple modem Digital Signal Processing (DSP) devices, operational by execution of external and re-loadable software code requiring maintenance and/or upgrade thereof. (See col.1:9-13).

Col. 12:60 – col. 13:67 of Foltak teach that two conditions have to be met in order for downloading to take place – 1) *Marking of the modem for which uploading is going to take place as "Recovery Pending" or "Upgrade Pending"* and 2) no active calls remaining. ("[I]f any modem on a given module is *in either a "Recovery Pending" or "Upgrade Pending"* state and if there are no active calls remaining on that module, the module is downloaded to right away." Col. 12:60-63 (emphasis added).) In other words, Foltak in order to upgrade requires three independent steps:

- first, screening all modems to see if they are “bad” (“A modem or DSP device is considered `bad` if it fails to function for a number of consecutive calls, such as twenty or thirty consecutive calls.” Col. 9:43-46);
- second, marking bad modems and placing them in a “recovery pending state” or “upgrade pending state” (“Mark the modem bad. none: Ignore the recovery threshold and just keep going. download: Set the modem into a recovery pending state thus stopping the modem from accepting new calls.” Col 13:65- col:14:3.); and
- third, upgrading on those labeled modems. Id.

Foltak views that this additional, separate step of screening all modems to mark certain modems bad is advantageous because some NAS devices contain a high number of modems, some of which are bound to fail. “[A] NAS is likely to contain a large number of modem. Some of the higher model NAS devices, such as Cisco's 5800 product, can have up to 2,048 modems. The next generation of NAS devices are being developed with significantly higher numbers. Given time, some of the modems (or DSP) devices are bound to fail in the course of operation of the NAS.” (Col. 9:31-36)

On the other hand, Applicant's claim 9 allows “periodic checking” of a network access device for “availability of software” and “automatic downloading” of software “immediately after the checking step” whether or not the network access device is marked as a pending recovery or update state. Therefore, unlike Foltak which includes an additional step of screening all modems to mark certain modems “bad,” Applicant's claim 9 checks availability of software and then automatically loads software to the device immediately. Foltak teaches away from the immediately loading by requiring a marking in certain upgrade state first. Therefore, claim 9 is distinguished from Foltak.

Amended claim 9 is not anticipated by Foltak for failure to teach “automatic loading” of software “immediately followed by checking”. Applicant has reviewed the Examiner’s cited sections in Foltak, and does not see Foltak to teach or suggest the limitations of amended claim 9 for the reasons stated above. Accordingly, amended claim 9 is believed to be allowable over Foltak and Applicant respectfully requests withdrawal of the rejection under Section 102(e).

#### **B. DEPENDENT CLAIMS 10-16**

Claim 10-16, depend directly or indirectly on independent claim 9 and thereby includes all the limitations of amended claim 9, along with additional limitations. Accordingly, claims 10-16 are believed to be allowable for at least the same reasons as amended claim 9.

Applicant respectfully requests withdrawal of the rejections of claims 10-16 under Section 102(e).

#### **III. REJECTIONS UNDER SECTION 102, FOLTAK IN VIEW OF XU**

Claims 1-8 and 17-24 are rejected under Section 103(a) as being unpatentable over Foltak in view of Xu. Applicant respectfully submits that the amended independent claims 1, and 17 are novel as they are not unpatentable over Foltak in view of Xu. The cited references do not teach each and every element of these claims.

#### **A. CLAIMS 1 AND 17**

By the present amendment, claims 1 and 17 have been amended to more clearly claim the embodiments of the Applicant’s invention. In particular, Claim1 has been amended to recite in part “directly begins loading upon checking that said first software requires

replacement.” Claim 17 has been amended to recite in part “in which the mobile user is authorized through one or more embedded IDs generated into an embedded reserved field of a file”.

Support for the amendment to Claim 1 can be found in Applicant’s specification in paragraph [0031] where it states, “The access point devices are further programmed to periodically do a software check with the server. If the current software version in the device is the same as that stored in the server, no action is taken. If the version in the server is different, then the system automatically loads the current software version into the device” (emphasis added). Support can also be found in paragraph [0071]: “If the version 167 in the server 153 is different from the version 169 in the access point 143 (Block 181), the access point 143 begins a shutdown operation 183. The access point 143 stops making new connections, and waits until all current connections are terminated (Block 183). When all connections are terminated the access point 143 continues..and loads...the new version...” (emphasis added).

Support for the amendment to claim 17 can be found in Applicant’s specification in paragraph [0028] describing “the present invention establishes the identity of users by using embedded IDs generated from the client device’s and access point’s hardware host addresses into reserved string fields of an HTML file”, and further in paragraphs [0056], [0057] and [0060].

#### FOLTAK

As to the added limitation of amended Claim 1, Applicant hereby incorporates its argument made in Paragraph I. A. for amended Claim 9 as the amendment to claim 1 is similar in reciting that the software loading apparatus “directly begins loading upon checking that said first software requires replacement” and not AFTER steps such as marking a device in a certain state for later upgrading. As such, Foltak’s required marking and staging of the

upgrade does not teach or suggest the limitations of amended claim 1 of “directly begins loading upon checking”.

With regard to amended claim 17, Foltak nowhere provides for the required limitation of “the mobile user is authorized through one or more embedded IDs generated into an embedded reserved field of a file”. As such, Foltak fails to teach each and every claim limitation of claim 17.

#### XU

Xu is directed to a method of connecting a wireless user generating digital data to a computer network. Col. 1:9-12. With regard to claims 1 and 17, Xu fails to provide for the deficiencies of Foltak. Xu does not teach or suggest the requirements of claim 1 of software loading apparatus for automatically loading second software “directly begins loading upon checking that said first software requires replacement”. Neither does Xu teach or suggest the requirements of claim 17 of “the mobile user is authorized through one or more embedded IDs generated into an embedded reserved field of a file”.

Accordingly, not all the elements of amended claims 1 and 17 are taught as required to establish a *prima facie* case of obviousness. Therefore, amended claims 1 and 17 are believed to be allowable over Foltak in view of Xu and Applicant respectfully requests withdrawal of the rejection under Section 103(a).

#### B. DEPENDENT CLAIMS 2-8, 18-24

Claim 2-8, depend directly or indirectly on claim 1 and thereby includes all the limitations of amended claim 1, along with additional limitations. Claim 18-24, depend directly or indirectly on claim 17 and thereby includes all the limitations of amended claim 17, along with additional limitations. Accordingly, claims 2-8 and 18-24 are believed to be

allowable for at least the same reasons as amended claims 1 and 17. Applicant respectfully requests withdrawal of the rejections of claims 1-8 and 17-24 under Section 103(a).

### **Conditional Request For Constructive Assistance**

Applicant has made a diligent effort to amend the claims of this application so that they define novel and unobvious structure. If, for any reason, the Examiner believes that the claims of this application are not yet in full condition for allowance, applicant respectfully requests his constructive assistance and suggestions pursuant to the spirit of MPEP § 2173.02 and § 707.07(j). This will enable the undersigned to place this application in fully allowable condition as soon as possible and without the need for further proceedings. The Examiner is authorized to make any needed minor corrections or changes.

### **IV. CONCLUSION**

The above-discussed remarks are believed to place the present Application in condition for allowance. Should the Examiner have any questions regarding the above amendments, the Examiner is requested to telephone Applicant's representative at the number listed below.

Respectfully submitted,

Date: October 31, 2007

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